



CITY OF  
**PORTLAND, OREGON**  
HEARINGS OFFICE

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Anna Elyse Atwell

CASE NO. 3090210  
(TriMet Exclusion Number 122294)

HEARING DATE: June 5, 2009

**APPEARANCES:**

Anna Elyse Atwell, excluded party

Rail Supervisor Thomas Bernards, for TriMet

HEARINGS OFFICER: Mr. Gregory J. Frank

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Timelines: The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Ms. Anna Elyse Atwell on May 15, 2009. The case was forwarded to the City of Portland Hearings Office on May 21, 2009. The Hearings Office mailed a hearing notice to the parties on May 21, 2009, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Atwell's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Atwell when she was excluded. The notice did reference the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued.

Mitigating and/or Aggravating Factors: The Hearings Officer finds no mitigating or aggravating factors existed when the Notice of Exclusion was issued.

Probability that the excluded individual engaged in the conduct supporting the exclusion: Ms. Atwell appeared and testified at the hearing on her own behalf. TriMet Rail Supervisor Bernards appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Ms. Gamel and Supervisor Bernards and the exhibits admitted, without objection from either party, into the evidentiary record (Exhibits 1 through and including 6).

Supervisor Bernards testified that on May 15, 2009 he contacted Ms. Atwell who was departing a TriMet Max train at the Kings Hill station. Supervisor Bernards stated that Ms. Atwell did not have, in her possession, proof of payment of a valid fare. Ms. Atwell stated that she was not sure where Fareless Square ended. Ms. Atwell

stated she did not purchase a fare as he believed that she was in Fareless Square. Supervisor Bernards stated that Fareless Square ends and payment is required when a Max Train leaves westbound from the Galleria station; 2 stations east of the Kings Hill station.

The Hearings Officer finds both Ms. Atwell and Supervisor Bernard's testimony to be credible. The Hearings Officer finds that both Ms. Atwell and Supervisor Bernards' testimony was in agreement that Ms. Atwell did not have, in her possession, proof of valid fare. Further, the Hearings Officer finds that the Kings Hill station is two stations beyond the end of Fareless Square thereby, proof of valid fare is required of a TriMet Max passenger when riding on a train at the Kings Hill station.

The Hearings Officer finds the Notice of Exclusion issued to Ms. Anna Elyse Atwell on May 15, 2009 is valid.

Special Exceptions: The Hearings Officer finds Ms. Atwell is transit dependent. Supervisor Bernards stated that he had no problems with the issuance of a liberal qualified exclusion to Ms. Atwell. Ms. Atwell stated that she is currently unemployed excepting for intermittent short-term jobs. Ms. Atwell stated that she is seeking employment and submits employment applications and attends job interviews. The Hearings Officer finds that Ms. Atwell needs access to TriMet vehicles, system-wide, Monday through and including Saturday, from 6:00 a.m. to 8:00 p.m.

Even though Ms. Atwell has been granted a qualified exclusion, she must still follow all TriMet laws/rules while on TriMet property/vehicles. Violation of TriMet laws/rules, while on TriMet property/vehicles may subject Ms. Atwell, during the term of this exclusion, to being charged with the crime of Interfering with Public Transportation (ORS 166.116) or the crime of Criminal Trespass in the Second Degree (ORS 164.245).

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Ms. Anna Elyse Atwell on May 15, 2009.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on June 11, 2009, and shall conclude on July 9, 2009 at 5:00 p.m.

3. Scope of the Exclusion:

Ms. Atwell shall have access to TriMet vehicles, system-wide, Monday through and including Saturday, from 6:00 a.m. to 8:00 p.m.

4. This order has been mailed to the parties on June 8, 2009, not more than five (5) business days following the hearing, and will become final on June 11, 2009, three (3) business days following the order being mailed.

5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 8, 2009

  
Gregory J. Frank, Hearings Officer

GJF:gj/cb

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System print out	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing list	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received